

EXHIBIT B

Goldsmith, Andrew M.

From: Goldsmith, Andrew M.
Sent: Thursday, March 9, 2023 6:44 PM
To: lawatf (null)
Cc: Zakarin, Donald S.; Farkas, Ilene S.; Maida, Brian M.; vikerlaw@gmail.com; keisha.rice@gmail.com
Subject: RE: Griffin: Liability PTO [Final Subject to Client Comments]
Attachments: 210 - List of Prior Art Songs.pdf; 211 - Get Off My Cloud Published Sheet Music.pdf; 212 - Sheet Music - People Get Ready, Lo and Behold, Billie Jean.pdf; 213 - Selected Van Morrison Prior Art - Sheet Music.pdf; 214 - Prior Sheeran Anticipations.pdf; 215 - Page 275 of Stewart Deposition.pdf; (1) Copyright App-Reg.PDF; (2) EP 314589 Digitized Deposit.pdf; (4) TOL Published Sheet Music.pdf

(Email 2 of 2)

ANDREW M. GOLDSMITH

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Cc: Zakarin, Donald S. <DZakarin@PRYORCASHMAN.com>; Farkas, Ilene S. <IFarkas@PRYORCASHMAN.com>; Maida, Brian M. <BMaida@PRYORCASHMAN.com>; vikerlaw@gmail.com; keisha.rice@gmail.com
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(Email 1 of 2 – Due to Attachment Size)

Pat:

I am attaching (subject to client comments) in Word and PDF what should be the final Liability PTO from our perspective.

Please note the following:

- (1) We made a few edits to our Counter-Finding No. 18, which you can see in redline in the attached screenshot.
- (2) In our Objections to your Exhibits, to the extent we have filed motions in limine (or intend to), I have indicated the “number” of the motion in limine. For example, for Exhibit 101, it now says “Defendants have filed a motion *in limine* (their Seventh Motion *In Limine*) to exclude this evidence”
- (3) We added two Exhibits corresponding to published sheet music for various works (Exhibits 212 and 213), and we added the Official TOL Music Video as an Exhibit (Exhibit 236). We also reordered the numbering of some of our other Exhibits, but the only additions are the three Exhibits I noted in the preceding sentence.

- (4) Excluding the Audio files, YouTube links and Ferrara Report (which we will need to redact to excise portions that reference the LGO Recording), I am attaching to this email the Joint Exhibits and Defendants' Exhibits. You should already have all the audio, but we will send the Audio Exhibits via FTP in a separate email. Again, as with the Damages PTO, we have not yet applied "Sticky Labels" to the PDF Exhibits, but we will do so in advance of trial.

If you have any questions or require any clarification, please let us know. Otherwise, if you're set with the attached version of the Liability PTO, please sign and scan it back to us (and, then, assuming our clients have no further comments necessitating changes, we can file it on or before the deadline).

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LIST OF 100 PRIOR ART WORKS
(All 100 Predate *Thinking Out Loud*; 36 Also Predate *Let's Get It On*)

Pre-LGO (1973), 32 Songs With I, iii, IV, V Chord Progression

1. "Christmas Bride" (1959) Ray Conniff
2. "True Love Ways" (1960) Buddy Holly and (1965) Peter & Gordon
3. "Last One to Know" (1961) The Fleetwoods
4. "Mister Lonely" (1962) Bobby Vinton
5. "Big Girls Don't Cry" (1962) The Four Seasons
6. "If I Had a Hammer" (1962) Peter, Paul and Mary
7. "Once Upon a Dream" (1963) Billy Fury
8. "Sugar and Spice" (1963) The Searchers
9. "Christmas (Baby Please Come Home)" (1963) Darlene Love
10. "A Summer Song" (1964) Chad and Jeremy
11. "Fun, Fun, Fun" (1964) The Beach Boys
12. "I Do" (1964) The Castells and The Beach Boys
13. "Downtown" (1964) Petula Clark
14. "I Feel Fine" (1964) The Beatles
15. "I Go to Pieces" (1965) Peter & Gordon
16. "You Didn't Have to Be So Nice" (1965) The Lovin' Spoonful
17. "Turn Around" (1966) Sonny & Cher
18. "Just Like a Woman" (1966) Manfred Mann
19. "Since I Lost My Baby" (1966) Ray French
20. "You, Baby" (1966) The Turtles
21. "Georgy Girl" 101 Strings Orchestra (1967), The Seekers (1966) and The Boston Pops (1968)

22. "Different Drum" (1967) Stone Poneys
23. "Phantom 309" (1967) Red Sovine
24. "Hurdy Gurdy Man" (1968) Donovan
25. "Baby Make It Soon" (1969) Marmalade
26. "Make Your Own Kind of Music" (1969) Mama Cass Elliot
27. "I Started a Joke" (1968) The Bee Gees
28. "Pass It On" (1969) Kurt Kaiser
29. "You Know My Name (Look Up the Number)" (1970) The Beatles
30. "Sooner or Later" (1971) The Grass Roots
31. "Crocodile Rock" (1972) Elton John
32. "Nice to Be With You" (1972) Gallery

Pre-LGO (1973), 4 Songs With I, I/3, IV, V Chord Progression

1. "Tuxedo Junction" (1939) Glenn Miller and (1959) Quincy Jones
2. "Do You Love Me" (1962) The Contours
3. "Get Off of My Cloud" (1965) The Rolling Stones
4. "Expressway to Your Heart" (1967) Soul Survivors

1973 Through 2013 (before TOL), 47 Songs With I, iii, IV, V Chord Progression

1. "I Won't Last a Day Without You" (1974) The Carpenters
2. "Hasta Manana" (1974) ABBA
3. "You" (1975) George Harrison
4. "Moviestar" (1975) Harpo
5. "Xemx" (1975) The Tramps
6. "Knowing Me, Knowing You" (1976) Abba
7. "New England" (1976) Jonathan Richman
8. "Tell Me Now" (1976) Mary Hopkin
9. "I've Got Love on My Mind" (1977) by Natalie Cole
10. "Right Time of the Night" (1977) Jennifer Warnes
11. "Sleeping Single in a Double Bed" (1978) Barbara Mandrell
12. "Down in the Tube Station at Midnight" (1978) Jam
13. "Bright Side of the Road" (1979) Van Morrison
14. "Waiting for an Alibi" (1979) Thin Lizzy
15. "Going Underground" (1979) Jam
16. "I Don't Like Mondays" (1979) The Boomtown Rats
17. "Smoky Mountain Rain" (1980) Ronnie Milsap
18. "Our Last Summer" (1980) Abba
19. "Everytime You Go Away" (1980) Hall & Oates and (1985) Paul Young
20. "Amarillo by Morning" (1982) George Strait
21. "Nobody Wants to Be Alone" (1983) Crystal Gayle
22. "That's the Thing About Love" (1983) Gary Nicholson and Richard Leigh
23. "Checkin' It Out" (1984) Van Morrison

24. "Querida" (1984) Juan Gabriel
25. "Happy Hour" (1986) The Housemartins
26. "Hola Mi Amor" (1986) Junco
27. "Angel Eyes" (1988) Jeff Healey Band
28. "If We Hold On Together" (1988) James Horner & Will Jennings
29. "(Song for My) Sugar Spun Sister" (1989) The Stone Roses
30. "Heaven" (1989) Warrant
31. "Crutch Came Slinking" (1995) Guided By Voices
32. "Scattered" (1997) Green Day
33. "Fu**er" (2000) The Eels
34. "Cartoon Heroes" (2000) by Aqua
35. "An Attempt to Tip the Scales" (2000) Bright Eyes
36. "That's the Way I Like It" (2001) from *Sonic Adventure 2*
37. "F-Stop Blues" (2001) Jack Johnson
38. "Psycho Over You" (2002) The Queers
39. "Yoshimi Battles the Pink Robots Pt. 1" (2002) The Flaming Lips
40. "Stars Are Blind" (2006) Paris Hilton
41. "Torn on the Platform" (2007) Jack Penate
42. "Cool Edge – Day" (2008) from *Sonic Unleashed*
43. "Smokin From Shootin" (2008) My Morning Jacket
44. "Corazón Mentiroso" (2009) Karina
45. "Dark Fantasy" (2010) Kanye West
46. "Ain't Good Enough for You" (written and recorded c.1978, released 2010) Bruce Springsteen
47. "Posh Girls" (2010) Scouting for Girls

1973 Through 2013 (before TOL), 17 Songs With I, I/3, IV, V Chord Progression

1. "Hoppy Pampy" (1983) Cosmos
2. "Tore Down A La Rimbaud" (1984) Van Morrison
3. "The Power of Love" (1985) Huey Lewis & the News
4. "We Are Singapore" (1987)
5. "Kiss Me Deadly" (1988) Lita Ford
6. "Have I Told You Lately" (1989) Van Morrison
7. "She's In Love with the Boy" (1991) Trisha Yearwood
8. "Streets of Broken Hearts" (1992) Slaughter
9. "I Can Love You Like That" (1995) All-4-One
10. "Neve al Sole" (1997) Enrico Ruggeri
11. "You're Still the One" (1998) Shania Twain
12. "Six Pack Summer" (2000) Phil Vassar
13. "Bing Bang" (2004) from *LazyTown*
14. "The Road and the Radio" (2005) Kenny Chesney
15. "Golf Course Select" (2006) from *Wii Sports*
16. "Gloam Valley" (2007) from *Super Paper Mario*
17. "Better Than Me" (2012) Pete Riley and Amy Wadge

TOTAL: 100

The chord progression and the harmonic rhythm – and their specific selection and arrangement in “Let’s Get It On” – were not new or novel to “Let’s Get It On,” and their specific selection and arrangement was used in at least two successful songs that predate “Let’s Get It On” – “Georgy Girl” (1967) and “Since I Lost My Baby” (1966, as recorded by Ray French) – and in at least ~~one song~~two songs that ~~postdates~~postdate “Let’s Get It On” but ~~predates~~predates “Thinking Out Loud” – “I’ve Got Love On My Mind” (1977, by Natalie Cole) and “Six Pack Summer” (2000 by Phil Vassar); in addition, at least one successful song that predates “Let’s Get It On” uses the same selection and arrangement of the chord progression and the harmonic rhythm used in “Thinking Out Loud,” namely, “Do You Love Me?” (1962, by The Contours).

(Trial Testimony of Dr. Lawrence Ferrara).³